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# EUDO CITIZENSHIP OBSERVATORY

## *ACCESS TO ELECTORAL RIGHTS*

### *DENMARK*

Eva Ersbøll

June 2013



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European University Institute, Florence  
Robert Schuman Centre for Advanced Studies  
EUDO Citizenship Observatory

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***Denmark***

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# **Access to Electoral Rights**

## **Denmark**

**Eva Ersbøll**

### **1. Introduction**

This report reviews electoral rights and procedures in Denmark. Denmark is a representative democracy where citizens influence political decisions by voting in elections for the national parliament (Folketing), the European Parliament, and in local and regional elections – although there are considerable limitations on the participation of Danish citizens living abroad. Foreign residents may bring their influence to bear in local and regional elections, while EU citizens can also vote in elections to the European Parliament.

The democratic framework is first and foremost laid down in the Constitutional Act of Denmark. Apart from specifying electoral rights with regard to representative bodies, the Constitution specifies the circumstances under which the entire electorate may or must be consulted directly and when it must have the final say in a referendum; for example, a referendum must be held in connection with a proposal to amend the Constitutional Act or to change the voting age. Members of the Folketing and regional and municipal councils may also decide to hold a consultative referendum, which means that voters are consulted prior to politicians making their final decision.

The Constitution states that the members of the Folketing shall be elected by universal suffrage, and by direct and secret ballot. The unicameral Folketing has 179 members, 175 from Denmark itself, two from the Faroe Islands and another two from Greenland. The members from these two parts of the realm are elected according to separate rules, on the same day.

Denmark constitutes a single electoral region in which the thirteen Danish members of the EP are to be elected.

Denmark is divided in five regions, run by regional councils, and 98 municipalities, run by municipal councils. Elections for these bodies are held every four years.

The question of extending the scope of some electoral rights have been topical for a number of years.

For Danish citizen residents the most important question has concerned the age threshold for enfranchisement which is currently eighteen years. Youth organisations have argued for a sixteen years of age threshold, which has been supported by voting experts and some political parties.

The most persistent question has been about the lack of electoral rights for non-resident Danish citizens. According to the Danish Constitution, sect. 29, the right to vote in

national elections (elections to the Folketing) is conditioned by permanent residence (domicile) in Denmark. Danish emigrant organisations have advocated external voting rights since many years. The extension of such rights is supported by most political parties and, consequently, the residence requirement has been broadened as much as possible within the limits of the Constitution. Furthermore, the franchise has been extended to various categories of expatriates with ties to Denmark. Going further would require an amendment of the Constitution following a long and complex procedure.

The issue of electoral rights for EU citizens residing in Denmark has not spurred much attention. When the EU Directive on union citizens' voting rights in local elections was implemented, Denmark had already granted electoral rights at local elections to first Nordic citizens since 1977, following a recommendation from the Nordic Council, and later, in 1981, to all foreigners.

However, in 2010, electoral rights for foreigners turned into a salient issue. The Danish People's Party, which at that time supported the Liberal-Conservative government, was against foreigners' franchise with the exception of Nordic citizens. The government could not support a revocation of foreigners' voting rights, but consented to adding one extra year to the three-year residence requirement which at that time applied to third country nationals. However, in 2012, after the new centre-left government came into office, the four-year residence requirement was repealed and the former three-year requirement was restored.

The latest Danish discussion on electoral rights has focused on the reasonability of disenfranchising disabled persons who have been deprived of their legal capacity. The debate sparked as a result of Denmark's ratification of the UN Convention on the Rights of Persons with Disabilities and was initiated by the Danish Institute for Human Rights. According to the latter, it is a violation of the convention's article 29 to exclude persons with a disability from voting rights based on their lack of legal capacity.

This report provides an overview of electoral rights for Danish citizen residents, Danish citizens abroad, foreign residents and EU citizen residents in Denmark. Subsequently, it deals with the exercise of electoral rights in Denmark.

## **2. Eligibility: Who has electoral rights under national law?**

### **2.1. Citizen residents**

Provisions on electoral rights are included in the Danish Constitution, sect. 29 (voting rights) and sect. 30 (eligibility). Electoral rights to the Folketing are granted to anyone with Danish citizenship, residence/domicile in the Realm and an age provided for by law, unless the person has been declared incapable of conducting his or her own affairs. Anyone with voting rights is eligible for membership of the Folketing, unless he or she has been convicted for an act which in the eyes of the public makes him unworthy of being a member of the Folketing.<sup>1</sup>

Pursuant to the Act on Elections to the Folketing, sect. 1, franchise for the Folketing is held by anyone who has

- Danish citizenship;
- turned eighteen years of age;
- residence/domicile in Denmark;

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<sup>1</sup>The Constitutional Act of Denmark of 5 June 1953.

- not been deprived of his or her legal competence;

Sect. 4 of the Act more or less repeats sect. 30 of the Constitution on the conditions for eligibility.<sup>2</sup>

According to sect. 96 of the Act, any person with a right to vote in general elections, who has been included in the electoral register, shall be entitled to participate in referenda.

The Faroe Islands and Greenland constitute autonomous parts of the Danish realm with self-government, but they are not members of the EU. The Faroe Islands chose from the very beginning to remain outside the EU, while Greenland joined the EU in 1973, together with Denmark. However, Greenland resigned EU membership after having acquired home rule status and became part of the EU Overseas Countries and Territories arrangement. As mentioned, the Faroe Islands' and Greenland's rules for elections to the Folketing are laid down in separate Acts, cf. sect. 7(2) in the Act on Elections to the Folketing.<sup>3</sup>

The rules on Danish citizens' franchise and eligibility at local and regional government elections (the Local and Regional Government Act, sect. 1 and 3) follow the principles of the Constitution and the Act on Elections to the Folketing, cf. also the Constitution's sect. 86 which states that the voting age for municipal elections must be the same as the voting age for parliamentary elections. The rules on voting in consultative referenda follow the same principles. In local and regional elections, electoral rights are conditioned by voters' residence/domicile in the municipality or the region.<sup>4</sup> Similar rules apply to franchise and eligibility for elections to the European Parliament; cf. the Act on Election of Danish Members to the European Parliament, sect. 3 and 6.<sup>5</sup>

### 2.1.1. Age

The Danish age threshold has, since 1978, been eighteen years for both voting rights and candidacy rights. The age threshold is the same in all types of elections. When the Danish Constitution was adopted in 1953, the age threshold was 23 years. Since then it has been changed in 1961 to 21 years, in 1971 to 20 years and in 1978 to eighteen years.

As mentioned in the introduction, some discussion is now taking place about lowering the age threshold down to sixteen years. The Danish Youth Council, which is an umbrella organisation and common platform for around 70 volunteer organisations working with children and young people in Denmark, initiated the establishment of a 'Voting Rights Commission' which published its report, 'Democracy in the Future' in 2011.<sup>6</sup> According to the Commission, young persons' democratic engagement can be strengthened by lowering the age threshold for voting. Young persons, who have reached sixteen or seventeen years of age, it argues, are ready to take on responsibility for society if they are entrusted to do so. However, the discrepancy between the age for voting, the age for eligibility and the age of majority implies a number of challenges. The Danish Constitution does not allow

<sup>2</sup>Consolidation Act No. 107 of 8 February 2011 on elections to the Folketing.

<sup>3</sup> See also Act No 358 of 30/06/1993 with later amendments on Elections to the Folketing in the Faroe Islands and consolidated Act No. 255 of 28/04/1999 on Elections to the Folketing in Greenland.

<sup>4</sup> Consolidation Act No. 105 of 8 February 2011 on Local and Regional Elections.

<sup>5</sup> Consolidation Act No. 106 of 8 February 2011 on Election of Danish Members to the European Parliament.

<sup>6</sup> See report in Danish: *Demokrati for fremtiden*

[http://duf.dk/fileadmin/user\\_upload/DOKUMENTER/Maerkesager/Valgret/PUB\\_2011-12-01\\_Valgretskommissions\\_betaenkning\\_-\\_Demokrati\\_for\\_fremtiden.pdf](http://duf.dk/fileadmin/user_upload/DOKUMENTER/Maerkesager/Valgret/PUB_2011-12-01_Valgretskommissions_betaenkning_-_Demokrati_for_fremtiden.pdf)

distinguishing between voting and voting rights on the grounds of age. Thus, if the age threshold for voting is lowered, the age threshold for eligibility must be lowered correspondingly and consequently, a person who has not reached the age of majority may be elected member of the Folketing or a regional or municipal council. This would under the current legislation on custody of minors require consent from the parents/guardians. Moreover, questions on minors' liability may arise.

Among the members of the Commission, a majority has proposed that the Folketing discusses the introduction of a sixteen years or seventeen years age threshold for voting rights. If such discussions do not lead to a lower age threshold, they suggest to experiment granting voting rights for persons who have turned sixteen, or alternatively seventeen, at the next European Parliament election in 2014. If, eventually, an amendment of the Constitution becomes a possibility, it is proposed to reconsider the necessity of requiring the same age threshold at all kind of elections and for voting and candidacy rights.

The government has, in its government platform of 2011, declared that it will provide a basis for experiments with youth participation in local elections.<sup>7</sup> The government will take the conclusions from the Danish Youth Council's Electoral Commission into consideration.

### 2.1.2. Mental disabilities

Persons with mental disabilities may be disenfranchised. According to the Danish Constitution, sect. 29, a person who has been declared legally incompetent (incapable of conducting his or her own affairs under 'a declaration of incapacity')<sup>8</sup> becomes disenfranchised. The need of 'having somebody declared legally incompetent' was implemented in the former Custody Act. The Act was, however, repealed and replaced by the Guardianship Act in 1997.<sup>9</sup> The commission which prepared the Guardianship Act discussed the implications of the terminology used in the Constitution, sect. 29. The conclusion reached was that the requirement of sect. 29 implied that a person who, according to the new Guardianship Act, is deprived of his or her legal capacity under a guardianship order must lose his or her voting rights.

The Guardianship Act provides for different forms of guardianship for persons who because of mental illness are unable to handle their own affairs. Guardianship may be limited to economic matters, including definite assets or affairs (like property or securities) or personal matters, including definite personal matters (like placement at a residential home), cf. sect. 5 of the Guardianship Act. Decisions on guardianship must be tailored to the individual needs of the person under guardianship, and must not be more extensive than necessary.

In connection with a guardianship comprising economic matters, the person under guardianship may be deprived of his or her legal capacity if this is necessary in order to prevent him or her from exposing assets, income or other economic interests of danger to deteriorate significantly or in order to prevent economic exploitation, cf. sect. 6 of the Guardianship Act.

<sup>7</sup> 'Local' is translated directly from Danish and may not be synonymous with 'municipal', since an experiment with a differentiated age threshold in national and municipal elections may be contrary to the Constitution's age requirement (sect. 86). It is, however, arguable that the regions are not 'municipalities' and therefore not covered by the Constitution, and consequently, that experiments at this level will not raise questions according to the Constitution.

<sup>8</sup> The Danish word is 'umyndiggjort'.

<sup>9</sup> See consolidated Act No. 1015 of 20 August 2007 on Guardianship (In Danish 'Værgemålsloven').

According to the different election Acts, a person with mental disabilities cannot vote after having been deprived of his or her legal capacity subsequent to sect. 6 of the Guardianship Act.<sup>10</sup>

As mentioned in the introduction, the Danish Institute for Human Rights has recommended the election Acts to be amended so that persons who are deprived of their legal capacity are not (automatically) deprived of their right to vote. The institute has based its recommendation on the Handicap Convention, article 12 and 29, assuming that the proposed amendment is not unconstitutional.<sup>11</sup> This assumption is, however, not shared by the Ministry of Justice.

### 2.1.3. Persons convicted of criminal offences

Prisoners are not disenfranchised. Yet, according to the election Acts, a conviction may make a person ineligible to run for public office. More specifically, a person may be convicted for an act which, in the eyes of the public, makes him or her unworthy of being either a member of the Folketing,<sup>12</sup> a local or regional council<sup>13</sup>, or of the European Parliament.<sup>14</sup> The requirement of not having been convicted for such an act is provided for by the Constitution, sect. 30(1). According to the Constitution, sect. 33, it is for the Folketing to determine the validity of the election of any member and decide whether a member has lost eligibility or not. According to the Local and Regional Government Elections Act, sect. 4(2), a criminal offence does not imply any forfeiture of eligibility when on Election Day three years have elapsed since the sentence has been served. If the penalty was an unconditional prison sentence of more than six months, five years must elapse before an individual can be deemed eligible for office again. In the European Parliament Election Act, sect. 6, the provision on loss of eligibility to run for electoral office due to loss of worthiness (paragraph 2) is supplemented by a provision (paragraph 3) on loss of eligibility for persons who are citizens of other EU member states where they have been deprived of their right to stand as a candidate for the European Parliament (provisions derived from EU law).

## 2.2. Citizens abroad

As already mentioned, according to the Danish Constitution, residence/domicile in Denmark is a condition for electoral rights and this condition is applied in every kind of election. Due to broad political consensus, the constitutional residence requirement has been broadened as much as possible within the limits of the Constitution. Specifically, electoral rights for national legislative elections have been extended to various categories of expatriates who are regarded as having kept their ties to Denmark.

### 2.2.1. Residence in the country

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<sup>10</sup> See the consolidated Act No. 107 of 8 February 2011 on Parliamentary Election Act, sect. 1(1), the consolidated Act No. 105 of 8 February 2011 on Local and Regional Elections, sect. 1 (2) (2) and the consolidated Act No. 106 of 8 February 2011 on Members of the European Parliament Election Act, sect. 3 (1) (ii).

<sup>11</sup> See *Selvbestemmelse og værgemål* (2012), p.17ff (Summary in English). See also the European Court of Human Rights judgment in the case *Kiss v. Hungary*, 20 May 2010.

<sup>12</sup> See the Parliamentary Election Act, sect. 4 (1).

<sup>13</sup> See the Local and Regional Government Act, sect. 4 (1).

<sup>14</sup> See the European Parliament Election Act, sect. 6 (2).



Residence in Denmark is, as mentioned, a general condition for electoral rights in national elections, cf. the Constitution, sect. 29 (voting rights) and 30 (eligibility). This requirement is listed in the Folketing Election Act sect. 1 and 4. Residence in Denmark is also a requirement for voting in national referenda.<sup>15</sup>

The rules on Danish citizens' franchise and eligibility at local and regional government elections follow the principles of the Constitution, cf. Local and Regional Government Elections Act, sect. 1 and 3.

According to the Act on the Civil Registration System, sect. 6, 'residence' means the place (dwelling) where a person regularly sleeps when not temporarily absent owing to holiday, business travel, illness or suchlike, and where the person has his or her property and belongings.<sup>16</sup>

### **2.2.2. Citizen residents who are temporarily absent on Election Day**

Citizen residents who are temporarily absent on Election Day can cast votes from abroad to national legislative elections and referenda at an embassy or specified polling station abroad, at a vote receiver appointed by the Minister for Economic Affairs and the Interior, at Danish ships engage and at Danish offshore installations, cf. the Folketing Election Act, sect. 57(2) and 58, cf. sect. 96(1) and 100.

Citizen residents can also vote by post in Denmark prior to departure at any national registration office in Denmark, cf. the Folketing Election Act, sect. 53.

Regarding Danish citizens who are temporarily absent on Election Day, the rules on Danish franchise and eligibility at local and regional government elections follow the principles of the Constitution and the Folketing Election Act, cf. the Local and Regional Government Elections Act, sect. 59, 63 (2), 64 and 67 (7).

### **2.2.3. Citizens who reside permanently abroad**

As mentioned above, electoral rights are constitutionally conditioned by residence in Denmark. In the electoral Acts the residence requirement is, however, interpreted extensively, thus allowing various groups of Danish citizens who have moved abroad to fulfil the requirement based on an assessment of their (continued) genuine link to Denmark.

Firstly, persons who are employed by the Danish State and ordered to enter service outside the realm are considered permanent residents in Denmark; cf. the Folketing Election Act, sect 2(1).

Secondly, persons who have taken up temporary residence in foreign countries are considered permanent residents in Denmark, cf. sect. 2(2), which lists the following groups:

- Persons being sent out in foreign service as employees of a Danish public agency or any local private undertaking or association;
- Persons taking up residence in foreign countries as employees of an international organisation of which Denmark is a member;

<sup>15</sup> Anyone with the right to vote in general elections is entitled to participate in national referenda, cf. the Folketing Election Act (2011) sect. 96(1).

<sup>16</sup> See the consolidated Act No. 878 of 14 September 2009 on the Civil Registration System.

- Persons being sent out to do service in foreign countries by a Danish relief organisation;
- Persons staying abroad for the purpose of education;
- Persons staying abroad for health reasons;
- Persons staying abroad who, with respect to affiliation with the realm, are to be regarded as equal to the persons specified above.

Two more groups are considered permanent residents in Denmark, namely, persons residing abroad who intend to return to the realm within two years (sect. 2(3)) and persons cohabiting at an address shared with a person who is considered a permanent resident in Denmark, if they have contracted marriage or registered partnership or meet the conditions for doing so (sect. 2(4)).

Pursuant to the Local and Regional Government Elections Act sect. 1, voting rights at local and regional elections are conditioned by residence in the municipality and the region, respectively. According to sect. 1(4), persons who according to the rules of the national civil registration system (CRS) fulfil the conditions for admission to the national register in the municipality shall be considered to reside in the municipality and the region in which the municipality is situated.

It follows from the Act on the Civil Registration System, sect. 24, that as a rule anyone moving abroad shall be registered in CRS as having left the country and that a stay of more than six months abroad shall always be reported as a move abroad. However, according to sect. 24(5) and (6), certain groups of persons shall not be registered as having moved abroad regardless of the length of their stay abroad, and regardless of whether they have maintained their residence/dwelling in Denmark.<sup>17</sup> These are persons who are employed by the Danish government and who have been ordered for service outside Denmark and persons cohabiting at an address shared with such persons if they have contracted marriage or registered partnership or meet the conditions for doing so.

Thus, the residence conditions for electoral rights are in accordance with the conditions for registration of residence as laid out in the CRS register.

For the sake of completeness it should be mentioned that the following persons are also CRS-registered with residence in Denmark and thus have electoral rights:

- Persons who for business and similar reasons for a period of more than six months stay most of the time abroad, but during this period spend most of their weekends, holidays, vacations etc. at their residence in Denmark
- Seafarers who maintain residence in Denmark, where the majority of days off (holidays, etc.) are spent
- Persons cohabiting at the same residence with one of the above mentioned persons.
- Sailors and passengers on board Danish ships engaged on international voyages
- Persons employed on Danish offshore installations

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<sup>17</sup> Cf. the consolidated Act No. 878 of 14 September 2009 on the Civil Registration System.

### ***2.3. Foreign residents:***

Electoral rights in Danish general elections are reserved to Danish citizens. However, since 1977, Nordic citizens have been granted electoral rights at local and regional elections and, since 1981, such electoral rights have been granted to all foreign residents.

#### **2.3.1. The default category of foreign citizens who are granted electoral rights**

*All* foreign residents who are above eighteen years of age, permanent resident in the municipality or the region and who have uninterruptedly resided in Denmark for the past three years prior to Election Day (in accordance with the rules of the CRS for being admitted to the national register) have electoral rights in local and regional elections.

#### **2.3.2. Specific other states whose citizens enjoy electoral rights**

Nordic citizens have electoral rights in municipal and regional elections on the same terms as Danish citizens. The background for granting Nordic countries' citizens electoral rights at local elections was Denmark's membership of the Nordic Council which issued a recommendation (No. 30/1973) on the electoral rights in local elections of Nordic citizens residing in another Nordic state than their own. In 1977, the electoral rights of Nordic citizens were subject to a three-year residence requirement in Denmark. This residence requirement was determined in light of the three-year condition for naturalisation which, at that time, applied to Nordic citizens.

The three-year residence requirement for Nordic citizens was repealed in 1995 when EU citizens were granted electoral rights under the same conditions as Danish citizens, cf. Local and Regional Government Election Act, sect. 1(1)(1-3).<sup>18</sup>

It is noteworthy that, in Denmark, a number of Icelandic citizens have special voting rights. The reason for this is that until 1918 Iceland formed a part of the Danish realm. For this historic reason the Danish Constitution, sect. 87, states that citizens of Iceland who enjoyed equal rights with citizens under the Danish-Icelandic Union (Abolition) Act shall continue to enjoy the rights of Danish citizenship under the Constitutional Act, including voting rights in national elections. According to the Union Abolition Act, such equal rights applied to Icelandic citizens with habitual residence in Denmark on 6 March 1946 or during the preceding ten years. At the general election in 2011, (only) 21 Icelandic citizens had retained their voting rights in Denmark (source: the Ministry for Economics Affairs and the Interior).

A principle of reciprocity is included in the Local and Regional Government Election Act, sect. 1 a. However, since Denmark became a member of the European Community this provision has been of no practical importance.

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<sup>18</sup> In 1981 when voting rights at local elections were extended to comprise all foreign residents, the importance of treating all foreigners on the same terms was stressed (see Danish Report on the amendment of the Act on local elections, etc., 1980.903). Consequently, the residence requirement of three years was then maintained as a general requirement for all foreigners residing in Denmark.

### 3. Electoral rights of EU citizens

This section deals with electoral rights regulated by EU law and specifically by the transposition of EU Council Directives 94/80/EC on local elections and 93/109/EC on European Parliament elections.

#### 3.1. *Local elections*

Electoral rights of EU citizens to the five regional councils follow the same principles as those applied to the 98 municipal councils elections. Directive 94/80/EC was fully implemented in the Act on Local and Regional Elections as of 1 July 1995.<sup>19</sup> The directive is implemented without derogations. EU citizens have electoral rights on the same terms as Danish citizens, cf. the Local and Regional Government Act, sect. 1(1)(2).<sup>20</sup> As mentioned in the introduction, the issue of EU citizens' electoral rights at local elections has been more or less uncontroversial, and there is no relevant case law on this matter in domestic courts or the ECJ.

#### 3.2. *EP elections for EU citizens residing in Denmark*

Directive 93/109/EC was, as of 1 February 1994, implemented in the Act on Election of Members of the European Parliament.<sup>21</sup> Franchise for EU citizens residing in Denmark is regulated in the Act's sect. 3(1). Voting rights are granted to every person who on the day of election is entitled to vote at Folketing elections (sect. 3(1)(1)) and to every person who is a citizen of another EU member state, of voting age in Folketing elections and permanent resident in Denmark or registered with the Protocol Department of the Ministry of Foreign Affairs (sect. 3(1)(3)). It is in any case a condition that the voter is not deprived of his or her legal capacity.

The Act's sect. 3(2) constitutes an exception to sect. 3(1)(1) since it states that persons with permanent residence in the Faroe Islands and Greenland are not entitled to vote in EP elections. This provision may (to a certain extent) violate EU law and should be interpreted narrowly, see section 3.3.<sup>22</sup>

The right to stand as candidate in EP elections is, according to sect. 6(1) granted to any person who is entitled to vote under sect. 3(1) and who fulfills the franchise conditions at least four weeks before Election Day, except for the age condition that must be fulfilled at the Election Day. However, like in other Danish elections, persons convicted of a criminal offence may be ineligible. This applies to Danish citizens who have been punished for an act which, by general standards, makes them unworthy of being a member of the EP (to be decided by the Folketing) and to resident EU citizens from other EU member states who, by a decision of civil or criminal law, have been deprived of their eligibility in their own member state, cf. sect 6(2) and (3). Sect. 42 lists a number of positions/offices which are irreconcilable with being a member of the EP (among others being a member of the Folketing, the European Commission, a judge, Advocate-general or registrar at the ECJ).

<sup>19</sup> See Act 208 of 1995 which implemented the directive.

<sup>20</sup> A specific registration rule (in accordance with directive 94/80) applies to EU citizens who are registered with the Protocol Department of the Ministry of Foreign Affairs, cf. sect. 1 (2).

<sup>21</sup> See Consolidated Act No. 106 of 18 February 2011.

<sup>22</sup> Eva Ersbøll: *Dansk indfødsret I international og historisk belysning* (2008), p. 345.

### 3.2.1. *EP elections for Danish citizens abroad.*

Voting rights of Danish citizens who are permanently resident in one of the other EU member states are contained in the Act's sect. 3(1)(2) which states that voting rights are granted to Danish citizens, of voting age in Folketing elections, who are permanently resident in one of the other EU member states (except when they are deprived of their legal capacity). The requirements are, with the exception of the residence requirement, the same as for participation in national elections.

Eligibility rights are linked to the right to vote, cf. sect. 6(1) as described above in section 3.2. The same exceptions apply in the case of Danish citizens residing abroad.

In the Act there are no specific procedures for exercising EP electoral rights from third countries. However, sect. 14(2) states that the rules laid down for electoral registers in the Folketing Election Act also apply to the preparation of the electoral register and to entry on this register by any person holding a franchise under sect. 3(1)(1) (i.e. anyone entitled to vote in parliamentary elections). Thus, for instance, a person who resides abroad and intends to return to the realm within two years is (still) considered a permanent resident in Denmark and may therefore exercise EP electoral rights from third countries.

The provision further states that for 'persons moving from or moving to the Faroe Islands or Greenland the same rules as for moving from or to another country apply'. The meaning of this provision does not appear quite clear in relation to Danish citizens who move (temporarily) from Denmark to the Faroe Islands or Greenland under circumstances that would allow them to vote from a third country (according to the rules described above under 2.2.3.). They are, according to the Act's sect. 3(2) disenfranchised, and when moving from Denmark to the Faroe Islands or Greenland they are notified that they cannot any longer vote in EP elections.<sup>23</sup>

This interpretation does not seem to be in accordance with the ECJ judgment in *Eman and Sevinger vs. College van burgemeester en wethouders van Den Haag* (C-300/04). In this case the Court concluded that persons who possess the nationality of a member state and who reside or live in a territory which is one of the overseas countries and territories may rely on the rights conferred on citizens of the Union in the EC Treaty (now the TFEU). As to voting rights in EP elections, a residence criterion may be applied, but the principle of equal treatment prevents the criterion from resulting in different treatment of nationals who are in comparable situations, unless that difference in treatment is objectively justified.

Dutch nationals who did not reside in the (metropolitan) Netherlands were treated differently by Dutch law, since those who resided in a non-member (third) state had the right to vote and to stand as a candidate in elections to the EP held in the Netherlands, whereas those residing in the Netherlands Antilles or Aruba had no such right. The Court did not find that the difference in treatment observed between Netherlands nationals resident in a non-member country and those resident in the Netherlands Antilles or Aruba was objectively justified.

A similar problem emerges when looking at Danish citizens who move to the Faroe Islands or Greenland under circumstances that would allow them to vote from third countries. It seems for instance hard to justify that a Danish citizen who intends to return to Denmark

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<sup>23</sup> These voters are told that they cannot be included in the electoral register of voters comprised by the Folketing Electoral Act, sect. 2 (2), since they will be comprised by separate Acts that apply in the Faroe Islands and Greenland. See annex 6 in the regulation on inclusion in the electoral register regardless of residence abroad: \\virfil01\users\eer\FRACIT\lovgivning\behandling af ansøgninger om optagelse på folketingsvalglisten uanset ophold i udlandet.mht.

from a third country within two years of departure is allowed in this period to vote in elections to the EP held in Denmark, whereas a Danish citizen who intends to move back to Denmark from the Faroe Islands or Greenland under the same circumstances is not allowed to do so.

### 3.2.2. *Other elections:*

EU citizens residing in Denmark do not have electoral rights in other elections than those mentioned above in section 3.2.

## 4. Exercising electoral rights

### 4.1. *National elections*

#### 4.1.1. Voter registration

In Denmark, inclusion in the electoral register is a condition for exercising electoral rights; cf. the Folketing Election Act, sect. 3. Citizen residents are automatically registered in the electoral register in the municipality where they are listed in the national register, cf. sect. 15. The same applies to referenda, cf. sect. 94.

Danish citizens residing abroad are, if enfranchised, required to make a request for inclusion in the electoral register in the municipality where they were last listed in the national register. The request must be submitted to the local council on a form which has been approved by the Minister for Economic Affairs and the Interior, cf. sect. 16.

Voters who have stayed abroad for more than four years and who are not comprised by sect. 2(1) can only be included in the electoral register provided that the Franchise Board considers the conditions of sect. 2(2) to be fulfilled in each individual case.<sup>24</sup>

Decisions regarding the inclusion in electoral registers of voters comprised by sect. 2(2) are valid for two years from the day of the decision. If, prior to the expiry of this term, the voter submits a request for renewed inclusion in the electoral register, the term is extended until a decision has been made.

#### 4.1.2. Casting the vote

The general method for casting a vote, available for citizen residents, is a *polling station in the district* where the voter is registered, cf. the Folketing Election Act. sect. 45 which states that in each polling district there should be only one polling station (where the voters can cast their vote). However, voters resident in remote islands which do not constitute a separate polling district may vote in the island by mail in advance, cf. sect. 54(4)

In general, absentee voting through mail ballot is possible in Denmark within the last three weeks prior to Election Day (however, not later than on the second to last weekday

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<sup>24</sup> The Minister for the Interior sets up a Franchise Board to decide on inclusion in the electoral register according to sect. 16(2).

preceding Election Day). Any voter who is prevented from attending the polls on Election Day may use this possibility at any national registration office, cf. sect. 53.

Voters who are hospitalised or confined to institutions may cast their votes in advance at the institution (hospitals, nursing homes, day care centres, institutions for persons suffering from handicaps, institutions under the Prison Service etc.), cf. sect. 54(1) and (2). Voters who, on account of illness or disability, are unable to turn up at a polling station and who are not granted the opportunity of casting their vote in one of these institutions may vote in advance at their homes, cf. sect. 54(3).

Voters who are staying in the Faroe Islands or Greenland may vote in advance at the Faroese or Greenland national registration offices or with a vote receiver appointed by the Minister for Economic Affairs and the Interior. Voters who are staying abroad may cast their vote in advance with a Danish diplomatic or consular mission or with a vote receiver appointed by the Minister for Economic Affairs and the Interior, cf. sect. 57.

Danish sailors and passengers on board Danish ships in foreign waters and persons employed at Danish off-shore installations may vote in advance on board the ship or at the off-shore installation. The ship's master or the person appointed by the ship's master, or the chief of the off-shore installation or the person appointed by the chief, shall act as vote receiver, cf. sect. 58(1).

The Minister for Economic and the Interior has, in November 2012, submitted a Bill on e-voting for a hearing. According to the minister, e-voting contributes to faster counting of the votes and fewer mistakes. Moreover, e-voting makes it easier for persons with disabilities to vote. What is suggested is e-voting at polling stations, i.e. non-remote e-voting for secrecy and security reasons. The Bill was not adopted by the end of the sessional year 2012-13 of the Danish Folketing.

#### **4.1.3. Running as candidate**

The parties which gained representation in the Folketing in the last general election and which continue to be represented therein are entitled to participate in general elections, cf. the Folketing Election Act, sect. 11. The right of participation in a general election furthermore extends to new parties which have been registered with the Minister for Economic Affairs and the Interior according to the rules of the Act (sect. 12). They may register until 15 days before Election Day by presenting signatures from voters supporting the registration. The number of signatures must correspond to at least 1/175 of the valid votes cast at the previous election.

A person who wishes to announce his candidature in the election in a nomination district may either stand for a party entitled to nomination or stand as an independent candidate. A candidate wishing to stand for a party must be approved by the party. An independent candidate must be recommended by at least 150 and at most 200 voters of the nomination district as supporters. No one shall be a candidate in more than one multi-member constituency. No one shall be a candidate of more than one party or a candidate of a party and an independent candidate at the same time cf. sect. 32.

#### **4.1.4. Assimilated or special representation of citizens residing abroad**

Denmark uses the model of ‘assimilated representation’ for citizens residing abroad whereby external voters are, upon request, registered in the electoral register in the municipality where they were last registered in the national register (cf. sect. 15).

Only in the case of the Faroe Islands and Greenland the model of ‘special representation’ with discrete seats is used. Sect. 7 states that among the 179 members of the Folketing two members are elected in the Faroe Island and two in Greenland.

## 4.2. Local and regional elections

### 4.2.1. Voter registration

As in Folketing elections, no one shall exercise voting rights in local and regional elections without being included in the electoral register. Voters are automatically registered in the electoral register in the municipality where they are listed in the national register, cf. the Local and Regional Government Act, sect. 7(1)(1). Citizens of another EU member state who are registered with the Protocol Department of the Ministry of Foreign Affairs are, however, entered *upon request* in the municipality where they have their private address – unless they were already entered there at the most recently election, are still registered with the Protocol Department and have not requested to be deleted from the register.

### 4.2.2. Casting the vote

In local and regional elections voting takes place within the same polling districts and follows the same procedures as in general elections, cf. 51 and sect. 59 – 65.

### 4.2.3. Running as candidate

Those nominated for elections are entered in lists of candidates, cf. sect. 19. A list of candidates for local elections shall be signed by a minimum of 25 voters in the municipality as supporters. In municipalities where the most recent local election mustered more than 25,000 municipal voters the local council may decide to increase the minimum number of supporters. The minimum number shall not, however, exceed 50. For the City of Copenhagen the minimum number shall not exceed 150.

A list of candidates for a regional election shall be signed by not less than 50 voters in the region as supporters. The regional council may decide to increase the minimum of supporters, which shall not, however, exceed 150.

### 4.2.4. Assimilated or special representation of citizens residing abroad

In local and regional elections, Danish citizens residing abroad are as a rule disenfranchised. Only a relatively small group of persons, who are employed by the Danish state and ordered to enter service outside the realm and their spouses or partners cohabiting with them, cf. the Act on the Civil Registration System, sect. 24 (5) and (6), and some groups who have maintained their residence in Denmark, cf. sect. 24 (7) and (8), retain their voting rights. Such persons fulfil the conditions in the national civil registration system (CRS) for admission to the national register in the municipality of residence prior to departure. Thus, since they are still considered to be permanently resident in the municipality or the region in which the municipality is situated, their votes are subsumed into the voting totals for the municipality or



the region, respectively, in a system of assimilated representation, cf. Local and Regional Government Act, sect. 1(4).

## **5. Concluding remarks**

The principal features of the Danish Constitution go back to the first constitutional Act of 1849 and several of the constitutional provisions keep influencing today's electoral legislation.

The Constitution plays a prominent role in limiting voting rights, both for Danish citizens abroad and for persons who are deprived of their legal capacity. Besides, the Constitution prevents the introduction of a differentiated age threshold for voting and candidacy rights.

The constitutional bindings will in all probability last for a number of years since the Danish Constitutional Act is extraordinarily difficult to amend. If the Folketing passes a Bill for an amendment and the government wishes to proceed with the matter, a general election must be called. If the Bill is passed (without changes) by the new Folketing after the election, it must be subjected to a referendum within six months after it was passed by the Folketing. Only if a majority of those voting, and at least 40 per cent of all those entitled to vote, vote in favour of the amendment, can the latter be incorporated in the Constitution, after it was signed by the Queen.

